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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 ALEXANDER J. HONG,

10 Defendant.

CASE NO. CR19-5210 BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
MODIFY SENTENCE

11 This matter comes before the Court on Defendant Alexander Hong's ("Hong")  
12 motion to modify sentence. Dkt. 4. The Court has considered the pleadings filed in  
13 support of and in opposition to the motion, the recommendation of United States  
14 Probation Officer, and the remainder of the file and hereby denies the motion for the  
15 reasons stated herein.

16 **I. FACTUAL & PROCEDURAL BACKGROUND**

17 On October 25, 2017, Hong pled guilty to one count of Conspiracy to Distribute a  
18 Controlled Substance in violation of 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C),  
19 and 21 U.S.C. § 846 pursuant to an indictment filed in the District of Nevada. Dkt. 2.

20 On November 27, 2018, the Honorable Richard F. Boulware sentenced Hong to a  
21 four-year period of probation. Dkt. 2-3. As a condition of probation, Judge Boulware  
22 ordered Hong to serve 32-weeks of intermittent confinement in custody, with the specific

1 requirement to serve “three consecutive weeks” each month beginning in January 2018.

2 *Id.* When imposing intermittent confinement on Hong, Judge Boulware considered (1)  
3 Hong’s need to operate a local family restaurant which supports Hong, his significant  
4 other and child, and his mother and (2) the fact of Hong’s father’s recent passing. *See*  
5 Dkt. 4, Declaration of Bradley G. Barshis, ¶ 4.

6 Hong transferred his probation to this District in May 2019. Dkt. 1. On June 3,  
7 2019, United States Probation Officer Todd Skipworth (“Officer Skipworth”) petitioned  
8 the undersigned to strike the condition requiring three *consecutive* weeks of incarceration  
9 each month. Dkt. 3. Officer Skipworth explained that Hong operates a family restaurant  
10 and is also a real estate agent and that the basis of the request was to better accommodate  
11 Hong’s sources of income. *Id.* The undersigned approved the modification. *Id.* As  
12 modified, Hong’s condition of intermittent confinement now reads as follows: “You must  
13 serve a total of 32 weeks of intermitted confinement in custody. . . . You shall serve three  
14 consecutive weeks each month, **or as directed by the probation officer . . .**” *Id.*

15 On July 9, 2019, Hong filed a motion to modify the probation sentence by  
16 converting the remainder of his confinement time to home detention. Dkt. 4. Regarding  
17 the basis of the request, Hong writes in an unsworn letter that he experienced hardship  
18 running the restaurant while he was incarcerated during December and January. Dkt 4 at  
19 5 (“During those two months my business has also endured an L&I claim/audit, theft  
20 from employees, equipment failure and major decrease in sales.”).

21 Officer Skipworth filed a response with the Court opposing the request because  
22 Hong received a sentence considerably less than the original guideline imprisonment

1 range of 37 to 46 months. On July 12, 2019, the United States of America (“the  
2 Government”) responded. Dkt. 7. The Government also opposes the request. *Id.*

## 3 **II. DISCUSSION**

4 Hong asks the Court to modify his probation sentence by converting the remainder  
5 of his confinement to home detention. Dkt. 4. District judges may “modify . . . the  
6 conditions of a sentence of probation at any time pursuant to . . . the provisions applicable  
7 to the initial setting of the conditions of probation.” 18 U.S.C. § 3563(c). The Court  
8 considers the sentencing factors set forth in 18 U.S.C. § 3553(a) when setting the initial  
9 conditions of probation. 18 U.S.C. § 3562(a).

10 Section 3553(a) requires sentencing courts to impose a sentence that is “sufficient,  
11 but not greater than necessary” while considering factors like the seriousness of the  
12 offense, the history and characteristics of the defendant, and the need for the sentence to  
13 promote respect for the law, provide just punishment, afford adequate deterrence, and  
14 avoid unwarranted sentence disparities. 18 U.S.C. § 3553(a).

15 Upon careful review of the motion, the Court concludes that a probation sentence  
16 of 32 weeks of intermittent confinement is sufficient but not greater than necessary to  
17 accomplish the goals of the sentencing statute as set forth in § 3553(a). First, the Court  
18 notes that Hong relies heavily on hardships he experienced running the restaurant while  
19 the “three consecutive weeks” condition was still imposed. Dkt. 4 at 5. Moreover, while  
20 Hong continues to emphasize his father’s death in connection to the difficulty he faces  
21 running the restaurant, perhaps understandably, Judge Boulware already considered the  
22 impact of the loss of Hong’s father on his ability to run the restaurant when he imposed

1 the below-guideline sentence of probation. While Hong does state that he has fallen  
2 behind on tasks such as payroll and scheduling, *see id.*, the Court finds the modification  
3 approved by the undersigned on June 3 sufficient to negate the hardship serving three  
4 consecutive weeks of incarceration may have on performing those types of management  
5 tasks. For example, Officer Skipworth indicates that after the Court approved the  
6 modification, Officer Skipworth changed Hong's surrender and release dates at Hong's  
7 request. This action benefitted Hong, but he does not mention it or his newfound  
8 flexibility in the motion, which, when considered in connection to the lack of current  
9 hardship alleged, merits denial of the request. Therefore, the Court concludes that Hong  
10 fails to allege hardship sufficient to justify converting the remainder of his incarceration  
11 to home detention, and the motion is denied.

### 12 **III. ORDER**

13 Therefore, it is hereby **ORDERED** that Hong's motion to modify sentence, Dkt.  
14 4, is **DENIED**.

15 Dated this 24th day of July, 2019.

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BENJAMIN H. SETTLE  
19 United States District Judge  
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